
(2012) 01 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No's. 4530-4532 of 2005

Indian Oil Corporation Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Vadodara

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 — Rule 3(1)
Central Excise Rules, 1944 — Rule 192, 193, 194, 195, 196
Central Excises and Salt Act, 1944 —

Citation : (2012) AIRSCW 666 : (2012) 2 ALLMR 86 : (2012) 189 ECR 150 : (2012) 276 ELT 145 : (2012) 1 JT 265 : (2013) 3 RCR(Civil) 726 : (2012) 1 SCALE 292 : (2012) 1 UJ 315

Hon'ble Judges : Anil R. Dave, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Alok Yadav, M.P. Devanath, Krishna Mohan Menon and Rajesh Kumar, for the Appellant; Anup Choudhary Ashok K. Srivastava, Sunita Rani Singh, B. Krishna Prasad and Anil Katiyar, for the Respondent

Final Decision : Disposed Of

Judgement

A.K. Patnaik, J.

CIVIL APPEAL Nos. 4530-4532 of 2005

1. These are appeals u/s 35L(b) of the Central Excise Act, 1944 against the order dated 15.03.2005 of the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai, (for short "the Tribunal").

2. The facts very briefly are that the Appellant produces inter alia Reduced Crude Oil (for short "RCO"). By Notification No. 75/84-CE dated 01.03.1984, the Central government in exercise of its powers under Sub-Rule 1 of Rule 8 of the Central Excise Rules, 1944 (for short "the Rules") exempted goods described in Column 3 of the table annexed to the notification from so much of the duty of excise as is specified in the notification subject to the intended use, or the

conditions, if any, laid down in Column 5 of the table annexed to the notification. One of the goods exempted from excise duty by the notification was RCO, if produced only from indigenous crude oil subject to intended use as fuel for generation of electrical energy by electricity undertakings owned or controlled by the Central Government or any State Government or any State Electricity Board or any local authority or any licensee under Part-II of the Indian Electricity Act, 1910 except those who produce electrical energy not for sale but for their own consumption or for supply to their own undertakings. The proviso in the notification stated two conditions subject to which the exemption was granted and one of the conditions was that where the intended use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed. Rule 192 in Chapter X of the Rules provided inter alia that where the Central Government has by notification under Rule 8 sanctioned the remission of duty on excisable goods other than salt used in a specified industrial process and it is necessary for this purpose to obtain an excise registration certificate, he should submit the requisite application along with the proof of payment of the registration fee and shall then be granted a registration certificate in the proper form. Rule 192 further provided that the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate.

3. The Ahmedabad Electricity Company Ltd. had obtained a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules and on the strength of such registration certificate, purchased RCO from the Appellant availing the exemption from excise duty under Notification No. 75/84 dated 01.03.1984 (for short 'the exemption notification'). The registration certificate obtained by the Ahmedabad Electricity Company Ltd. expired on 31.12.1995 and a fresh registration was granted in its favour on 26.06.1996. After issuing two show-cause notices, the Assistant Commissioner of Central Excise passed two orders demanding excise duty of Rs. 32,35,485/- from the Appellant for RCO supplied to the Ahmedabad Electricity Company Ltd. during the period 01.01.1996 to 25.06.1996 on the ground that the said company did not have a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules during this period and, therefore, the RCO supplied by the Appellant to the Ahmedabad Electricity Company Ltd. during this period was not exempt from excise duty. The Appellant paid the excise duty and subsequently applied for refund contending that the registration certificate in Form CT-2 had been obtained by the Ahmedabad Electricity Company Ltd. on 26.06.1996. The refund claims were rejected by the Assistant Commissioner. Thereafter, the Appellant filed appeals before the Commissioner of Central Excise (Appeals) who confirmed the demands of excise duty for the period from 01.01.1996 to 25.06.1996. The Appellant then filed three appeals before the Tribunal against the orders of Commissioner of Central Excise (Appeals) confirming demand and the order rejecting the refund claim. By the impugned order, the Tribunal dismissed the appeals saying that as the statutory requirement of conditional exemption notification had not been complied with by the Appellant it was not entitled to the

exemption benefit.

4. Mr. Alok Yadav, learned counsel for the Appellant, submitted that the Tribunal failed to appreciate that the RCO supplied by the Appellant to Ahmedabad Electricity Company Ltd. was in fact used as fuel for generation of electrical energy and therefore the Appellant was entitled to the benefit of the exemption of excise duty under the exemption notification. He cited the decision of this Court in *Chunni Lal Parshadi Lal Vs. Commissioner of Sales Tax, U.P., Lucknow*, wherein it was held that a dealer can prove by any way other than the way contemplated by Rule 12A of the U.P. Sales Tax Rules, 1948 that the goods purchased from him were for resale. According to Mr. Yadav, the registration certificate in Form CT-2 is not the only way to prove that the goods sold by the Appellant to the Ahmedabad Electricity Company Ltd. were used as fuel for generation of electricity. He also relied on *Commnr. of Customs (Imports), Mumbai Vs. Tullow India Operations Ltd.*, wherein this Court held that ONGC being a government company would get the requisite exemption, subject, of course, to its fulfilling the condition of obtaining the essentiality certificate. He argued that the Appellant being a government company should not be denied the exemption on a technical ground that there was no registration certificate during the period 01.01.1996 to 25.06.1996.

5. Mr. Anup Chaudhary, learned senior counsel appearing for the Respondent, on the other hand, submitted that the exemption notification stipulated in the proviso the conditions under which the exemption from excise duty would be available and if the conditions were not fulfilled, the exemption would not be available to the manufacturer. He submitted that one of the conditions was that where the goods were to be used in a place other than in the factory of production, the procedure set out in Chapter X of the Rules is to be followed. He submitted that the procedure laid down in Rules 192 to 196 BB in Chapter X of the Rules, therefore, have to be followed, and if the procedure is not followed in any case, the exemption cannot be granted under the exemption notification. He submitted that since under Rule 192, the Ahmedabad Electricity Company Ltd. was required to obtain a registration certificate in Form CT-2 and the said company did not obtain a certificate for the period 01.01.1996 to 25.06.1996, RCO supplied by the Appellant to the Ahmedabad Electricity Company Ltd. during this period was exigible to excise duty. He cited the judgement of the Constitution Bench of this court in *Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc.*, in which it has been held that if a party wants remission of duty, he has to follow certain prerequisites, the object of which is to see that the goods are not diverted or utilised for some other purpose under the guise of the exemption notification and, therefore, a plea that the goods were meant for intended use specified in the exemption notification has to be rejected.

6. The question whether it was enough to prove to the satisfaction of the Central Excise Officer that the goods are for the intended use specified in the notification

of exemption or whether in addition the procedure laid down in Rule 192 of Chapter X of the Rules was also to be complied with for availing concession under the exemption notification was raised before this Court in *Thermax Private Limited Vs. The Collector of Customs (Bombay)*, New Customs House, and a two-Judge Bench of this Court held that the possession of a license or production of a C-2 certificate as provided in Rule 192 of Chapter X of the Rules enables the applicant to secure the necessary concession and that the entitlement to the concession will depend on whether the purchaser is the holder of a L-6 license (or C-2 certificate) or not. These observations made in *Thermax Private Limited v. The Collector of Customs (Bombay)*, New Customs House (supra) were held by a two-Judge Bench of this Court in *Collector of Customs, Bombay Vs. J.K. Synthetics Ltd.*, as not laying down principle and held to be limited to eligibility for concession under Rule 192 of the Rules. In the aforesaid decision in the case of *Collector of Customs, Bombay v. J.K. Synthetic Limited* (supra) this Court took the view that where there was evidence on record that show the intended use of the material, the benefit of exemption could be granted. In a subsequent decision in the case of *Collector of Central Excise, Jaipur Vs. J.K. Synthetics*, a three-Judge Bench of this Court took the view that if there was substantial compliance of the procedure laid down in Chapter X of the Rules, exemption could be granted. In the case of *Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others*, etc. etc., a Constitution Bench of this Court considered the decisions of this Court in *Thermax Private Limited v. The Collector of Customs (Bombay)*, New Customs House (supra) and *Collector of Central Excise, Jaipur v. J.K. Synthetics* (supra) and held that a provision for exemption, concession or exception, as the case may be, has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be complied with. In the aforesaid decision, the Constitution Bench further held that detailed procedures have been laid down in Chapter X of the Rules so as to curb the diversion and utilization of goods which are otherwise excisable and the plea of substantial compliance or intended use therefore has to be rejected.

7. When we strictly construe the exemption notification in this case, we find that the proviso in the exemption notification reads as under:

Provided that where any such exemption is subject to the intended use, the exemption in such case shall be subject to the following conditions namely:

(i) That it is proved to the satisfaction of an officer not below the rank of the Assistant Collector of Central Excise that such goods are used for the intended use specified in Column (5) of the said Table: and

(ii) Where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944, is followed.

Thus, the proviso makes it clear that for availing the exemption two conditions must be satisfied: First, that it is proved to the satisfaction of the excise officer

that the goods are used for intended use specified in Column (5) of the Table annexed to the exemption notification and second, where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed. We cannot, therefore, accept the contention of the learned counsel of the Appellant that if the first condition is satisfied, i.e. it is proved to the satisfaction of the Central Excise officer that the goods are used for the intended use, the exemption has to be granted. In our considered opinion, unless the second condition is also satisfied, i.e. the procedure set out in Chapter X of the Rules is followed where the use of the goods is elsewhere than in the factory of production, the exemption cannot be granted under the exemption notification.

8. In the facts of the present case, the RCO was not to be used in the factory of the Appellant but at the place of generation of electricity by the Ahmedabad Electricity Company Ltd. Hence, the second condition laid down in the proviso was also to be complied with. Rule 192 of Chapter X of the Rules is quoted hereinbelow:

RULE 192. Application for concession.- Where the Central Government has, by notification under Rule 8, or Section 5A of the Act, as the case may be, sanctioned the remission of duty on excisable goods other than salt, used in a specified industrial process, any person wishing to obtain remission of duty on such goods, shall make application to the Collector in the proper Form stating the estimated annual quantity of the excisable goods required and the purpose for and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. If the Collector is satisfied that the applicant is a person to whom the concession can be granted without danger to the revenue, and if he is satisfied, either by personal inspection or by that of an officer subordinate to him that the premises are suitable and contain a secure store-room suitable for the storage of the goods, and if the applicant agrees to bear the cost of such establishment as the Collector may consider necessary for supervising operation in his premises for the purposes of this Chapter, the Collector may grant the application, and the applicant shall then enter into a bond in the proper Form with such surety or sufficient security, in such amount and under such conditions as the Collector approves. Where, for this purpose, it is necessary for the applicant to obtain an Excise registration certificate, he shall submit the requisite application along with the proof for payment of registration fee and shall then be granted a registration certificate in the proper Form. The concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate:

Provided that, in the event of death, insolvency or insufficiency of the surety, or where the amount of the bond is inadequate, the Collector may, in his discretion, demand a fresh bond; and may, if the security furnished for a bond is not adequate, demand additional security.

The language of Rule 192 of Chapter X of the Rules is clear that for availing concession from excise duty on excisable goods used in a specified industrial

process, a person must obtain a registration certificate from the Collector and that "the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate". Admittedly, the registration certificate of the Appellant expired on 31.12.1995. Hence, the exemption granted under the notification ceased on 31.12.1995. The fresh registration certificate in favour of the Ahmedabad Electricity Company Ltd. was issued on 26.06.1996 and we find on a reading of the copy of the CT-2 certificate annexed as Annexure P5 that the registration certificate was not for any period prior to 26.06.1996. As the procedure laid down in Rule 192 of Chapter X of the Rules has not been complied with, the Appellant is not entitled to avail the exemption of excise duty under the exemption notification during the period from 01.01.1996 to 25.06.1996.

9. The appeals are, therefore, dismissed but there shall be no order as to costs.

CIVIL APPEAL No. 8048 of 2004:

10. This is an appeal u/s 35L(b) of the Central Excise Act, 1944 against the order dated 02.07.2004 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (for short "the Tribunal").

11. The facts very briefly are that the Appellant produces inter alia Naphtha. By Notification No. 3/2001-CE dated 01.03.2001 (for short "the exemption notification") issued u/s 5A of the Central Excise Act, 1944 (for short "the Act") the Central Government exempted inter alia Naphtha cleared for the intended use in the manufacture of fertilizers from excise duty subject to relevant conditions specified in the annexure to the notification. In the annexure to the exemption notification, one of the conditions specified was that where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 (for short "the 2001 Rules") is followed. Rule 3 (1) of the 2001 Rules provided that a manufacturer who intends to receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Indo Gulf Corporation Limited placed an order on 16.07.2001 on the Appellant for supply of Naphtha for the purpose of manufacture of fertilizers and furnished a letter to the Appellant saying it has made an application to the Commissioner of Excise for authorization for dispatch of one rake of Naphtha. The Appellant supplied 2241.908 MT of Naphtha to Indo Gulf Corporation Limited and while clearing the aforesaid Naphtha from its factory did not make any payment of Central Excise duty. The Commissioner of Central Excise issued show cause notice dated 13.06.2002 to the Appellant and after considering the reply of the Appellant passed the order dated 30.09.2002 confirming the demand of duty amounting to Rs. 44,71,902/- on the Naphtha cleared on 16.07.2001 and also imposed a penalty equivalent to the duty amount. The Appellant filed an appeal against the order of the Commissioner before the Tribunal and the Tribunal held in the impugned order that under the

exemption notification, the Appellant could be exempted from duty on Naphtha supplied to the manufacturer of fertilizer only if the conditions specified in the exemption notification are fulfilled. The Tribunal further held that one of the conditions specified in the exemption notification was that where the goods were to be used elsewhere than in the factory of production, the exemption would be allowed if the procedure set out in the 2001 Rules was followed and in this case Rule 3(1) of 2001 Rules has not been followed, inasmuch as, the manufacturer, namely, Indo Gulf Corporation Limited had not submitted application in the form at Annexure-1 for obtaining Naphtha without payment of duty and had only cleared the Naphtha without payment of duty on the basis of a letter dated 16.07.2001 wherein it was mentioned that it has submitted its application to the Commissioner for issuance of authorization for dispatching one rake of Naphtha. The Tribunal held that as the condition of the exemption notification has not been complied with, the Appellant was not entitled to clear naphtha without payment of excise duty and accordingly sustained the demand of excise duty. The Tribunal also held that as the Appellant had cleared Naphtha without payment of duty and without getting the requisite Annexure-1 from its customer, penalty was also imposable on the Appellant, but on the facts and circumstances of the case the penalty was excessive. The Tribunal accordingly reduced the penalty to Rs. 1,00,000/- only.

12. Mr. Alok Yadav, learned counsel for the Appellant, submitted that as the Naphtha supplied to Indo Gulf Corporation Limited was in fact used for manufacture of fertilizer, the Appellant was entitled to the benefit of exemption notification. He further submitted that as the Appellant was a government company, he should not be denied the exemption on a technical ground that the application at Annexure-1 was not submitted to the authorities by the manufacturer of fertilizer as provided in Rule 3(1) of the 2001 Rules.

13. Mr. Anup Chaudhary, learned senior counsel appearing for the Respondent, on the other hand, submitted that one of the conditions specified in the exemption notification was that where the goods were to be used in the place other than in the factory of production, the procedure set out in the 2001 Rules has to be followed and in this case the procedure set out in Rule 3(1) of the 2001 Rules has not been followed.

14. We have considered the submissions of the learned counsel for the parties and we find that by the exemption notification the Central Government exempted the excisable goods from duty "subject to the relevant conditions specified in the Annexure" to the exemption notification. Paras 3 and 4 in the Annexure to the exemption notification read as follows:

3. The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use specified in column 3 of the table.

4. Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable Goods) Rules, 2001 is followed.

It will be clear from Para 3 of the Annexure to the exemption notification that the exemption shall be allowed if it has been proved to the Central Excise Officer having jurisdiction that the goods are cleared for the intended use specified in column 3 of the table. In addition to this condition, there is a further condition in Para 4 of the Annexure to the exemption notification that where the intended use is elsewhere than the factory of production, the exemption shall be allowed if the procedure set out in the 2001 Rules is followed. We, therefore, do not accept the submission of Mr. Yadav that as the Naphtha cleared from the factory of the Appellant has been used for manufacture of fertilizer, the Appellant would be entitled to exemption even if the condition specified in Para 4 of the Annexure to the exemption notification is not followed.

15. The condition specified in Para 4 in the Annexure to the exemption notification states that where the intend use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the 2001 Rules is followed. In the facts of this case, the Naphtha produced by the Appellant in its factory was to be used for the manufacture of fertilizer elsewhere than in its own factory, i.e. in the factory of Indo Gulf Corporation Limited. Hence, the exemption could be allowed only if the procedure set out in the 2001 Rules was followed.

16. Rule 3(1) of the 2001 Rules is extracted hereinbelow:

Rule 3. Application by the manufacturer to obtain the benefit. - (1) A manufacturer who intends to receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be (hereinafter referred to as the said Assistant Commissioner or Deputy Commissioner).

Rule 3(1) makes it amply clear that the manufacturer, who intends to use subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Admittedly, no such application was made by Indo Gulf Corporation Limited in the form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise. As the procedure set out in the 2001 Rules has not been followed, the Appellant was not entitled to exemption on the Naphtha cleared from its factory for supply to Indo Gulf Corporation Limited for manufacture of fertilizer.

17. We, therefore, do not find any merit in the appeal and we accordingly dismiss the same. There shall be no order as to costs.